

**REMARKS**

This application contains claims 49-66. Claims 49, 52, 58 and 61 have been amended. No new matter has been introduced. Reconsideration is respectfully requested.

Claims 49-51, 55-60 and 64-66 were rejected under 35 U.S.C. 102(e) over Mauger et al. (U.S. Patent 6,507,577). Applicant has amended independent claims 49 and 58 in order to clarify the distinction of the present invention over Mauger. The amended claims now include the additional limitation, previously recited in claims 52 and 61, that the bidirectional service comprises an Ethernet connection, which is established through first and second tunnels through a network of label-switched routers between at least first and second users.

Mauger describes providing voice and media services over an IP network by means of a PPP session carried through a network tunnel (abstract). Although certain local components at either end of the tunnel may be connected by an Ethernet LAN, as shown in Fig. 6, Mauger neither teaches nor suggests that an Ethernet connection might be established through a tunnel, as recited in amended claims 49 and 58.

In rejecting claims 52 and 61, the Examiner indicated that the use of an Ethernet connection through a tunnel is disclosed by Mauger, but then went on to cite Kong et al. (U.S. Patent Application Publication 2002/0176450) in addition. The Examiner's reference to Mauger in this context appears to be in error, for the reasons explained above. It therefore seems that the Examiner relied on Kong to supply the Ethernet-related elements of claims 52 and 61.

Kong, however, is inapplicable as prior art against the present patent application, for the following reason: The present patent application was filed August 23, 2001; Kong was filed October 31, 2001, i.e., after the filing date of the present patent application and does not claim the benefit of U.S. Provisional Patent Application 60/265,393, filed January 31, 2001, although there is a reference to that Provisional Patent Application on the title page of Kong. MPEP 201.11(III.B.). Therefore, Kong is entitled to its October 31, 2001 filing date and is not prior art to the present, earlier-filed application.

However, even if the reference to the Provisional Application were considered to be a claim to priority, Kong would be effective as prior art against the claims in the present patent application only to the extent that US 60/265,393 provides Kong with valid priority. As noted in MPEP 706.02(f)(1)(B): "The 35 U.S.C. 102(e) date of a reference... is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120..."

Inspection of the file of US 60/265,393 reveals that this provisional application has no inventors in common with Kong. (US 60/265,393 lists Tsang, Barry and Azizoglu as inventors, whereas US 2002/0176450 lists Kong, Patel and Cao.) According to MPEP 201.11(D), one of the conditions for receiving the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is that:

"The later-filed application must be filed by an inventor or inventors named in the prior-filed application for a benefit claim under 35 U.S.C. 120,

121, or 365(c), and also for a benefit claim under 35 U.S.C. 119(e)."

Since US 2002/0176450 failed to meet this condition with respect to US 60/265,393, for this additional reason, Kong is not entitled to the priority date of the provisional application and is therefore disqualified as prior art against the present, earlier-filed patent application.

Therefore, independent claims 49 and 58, as amended, are patentable over the cited art. In view of the patentability of the independent claims, dependent claims 50, 51, 55-57, 59, 60 and 64-66 are also believed to be patentable.

Claims 52, 54, 61 and 63 were rejected under 35 U.S.C. 103(a) over Mauger in view of Kong. Claims 52 and 61 have been amended for proper antecedent dependence in view of the amendment to independent claims 49 and 58.

Applicant respectfully traverses the rejection of claims 52, 54, 61 and 63. Mauger neither teaches nor suggests the use of a VLAN value, as recited in claims 52 and 61, or SONET services, as recited in claims 54 and 63. The Examiner relied on Kong to provide these missing elements. As explained above, however, Kong is not applicable as prior art against the present patent application. Therefore, notwithstanding the patentability of independent claims 49 and 58, dependent claims 52, 54, 61 and 63 are independently patentable over the cited art.

Claims 53 and 62 were rejected under 35 U.S.C. 103(a) over Mauger in view of Mauger et al. (U.S. Patent 6,886,043). Applicant respectfully traverses this rejection. The VPN described by Mauger in US 6,886,043 is a Layer 3 (network layer) VPN, and not a Layer 2

transparent LAN service as defined in the present patent application. Therefore, notwithstanding the patentability of independent claims 49 and 58, dependent claims 53 and 62 are independently patentable over the cited art.

Applicant believes the amendments and remarks presented above to be fully responsive to all of the objections and grounds of rejection raised by the Examiner. In view of these amendments and remarks, all the claims in the present patent application are believed to be in condition for allowance. Prompt notice to this effect is requested.

Authorization is given hereby to charge any deficiency or credit any overpayments to Deposit Account No. 01-1785. A copy of this document is enclosed.

Respectfully submitted,

AMSTER ROTHSTEIN & EBENSTEIN LLP  
Attorney for Applicants  
90 Park Avenue  
New York, NY 10016  
(212) 336-8000

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By: 

Michael J. Berger  
Reg. No. 25,829